

# NEW HAMPSHIRE DRAFTING AND PROCEDURE MANUAL

## COVER SHEET FOR EMERGENCY RULE

Document Number \_\_\_\_\_ Rule Number He-W 654.04(d)

<p>1. Agency Name &amp; Address:</p> <p><b>Dept. of Health and Human Services Division of Family Assistance 129 Pleasant St, Brown Bldg. Concord, NH 03301</b></p>	<p>2. RSA Authority: <u>RSA 167:80, IV(h)</u></p> <p>3. Federal Authority: _____</p> <p>4. Type of Action:</p> <p>Adoption _____</p> <p>Amendment <u>X</u></p> <p>Repeal _____</p>
<p>5. Date of Filing: <u>September 1, 2016</u></p>	

6. Short Title: **Excluding Dependent Children's Supplemental Security Income (SSI) When Determining Eligibility and Benefit Amount for Financial Assistance to Needy Families (FANF)**

7. Contact person for copies and questions:

Name:	<b>Catherine Bernhard</b>	Title:	<b>Rules Coordinator</b>
Address:	<b>Dept. of Health and Human Services Administrative Rules Unit 129 Pleasant Street Concord, NH 03301</b>	Phone #:	<b>271-9374</b>

**\*\*PLEASE ATTACH THE FOLLOWING**, numbered to correspond to the numbers on this sheet (a separate sheet is not required for every item):

8. An explanation of the nature of (a) the imminent peril to public health or safety, demonstrating that the emergency rule is necessary to prevent the imminent peril, or (b) the substantial fiscal harm to the state or its citizens which could otherwise occur if the rule were not adopted as an emergency rule.

**Pursuant to RSA 541-A:18, I, the amendment of He-W 654.04 entitled, "Excluding Dependent Children's Supplemental Security Income (SSI) Income When Determining Eligibility and Benefit Amount for Financial Assistance to Needy Families (FANF)," by emergency rule is necessary to avoid substantial fiscal harm to the state or its citizens which could otherwise occur if the rule were not adopted as an emergency rule.**

**On August 2, 2016, the Supreme Court of New Hampshire in Carrie Hendrick & a. v. New Hampshire Department of Health and Human Services, reversed the Department of Health and Human Services' (Department's) rule at He-W 654.04(c) insofar that the Department's rule included children's SSI income in the eligibility and benefit determination process for FANF cash assistance. The Department is proposing an emergency rule to amend He-W 654.04 by inserting new paragraph (d) to conform with this ruling. The proposed rule would exclude dependent children's SSI income in the FANF eligibility and benefit determination process, effective September 1, 2016.**

**Excluding dependent children's SSI income in FANF results in less income being considered available to the household. Less income being considered means that more NH citizens with a dependent child receiving SSI will become eligible for FANF cash assistance and that NH citizens with a dependent child receiving SSI who are eligible for FANF will receive a larger benefit allotment.**

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- Between February 1, 2016 and July 31, 2016 there were 122 unduplicated FANF cases that were denied or closed due to being over the FANF income limit because one or more member was a dependent child receiving SSI. Excluding the child's SSI income will mean that if no other circumstances have changed, these 122 cases would be eligible for FANF cash as of September 1, 2016. The average monthly FANF cash grant is \$510. The exact grant will vary by household size and circumstance, but the fiscal harm to these NH citizens could be approximately \$61,710 in lost benefits each month this rule change is not implemented (122 cases X \$510 = \$62,220).
- As of August 10, 2016, there were 15 unduplicated cases receiving FANF cash, but whose monthly FANF benefit was smaller due to the Department counting the dependent child's SSI benefit in the FANF benefit determination process. Excluding the child's SSI income will mean that if no other circumstances have changed, these additional 15 cases will receive a larger monthly FANF cash benefit as of September 2, 2016. The average monthly benefit increase that will occur when the dependent child's SSI income is excluded in the 15 FANF cases is \$434.65. The exact increase will vary by household, but the fiscal harm to these NH citizens could be approximately \$6,519.75 in lost benefits each month this rule change is not implemented (15 cases X \$434.65 = \$6,519.75).

This brings the potential total monthly fiscal harm to the identified NH citizens affected by this proposed rule change to \$68,739.75 (\$62,220 + \$6,519.75) in lost benefits for each month this rule change is not implemented.

9. A summary of the effect if the rule were not adopted. **If this rule is not adopted:**

- NH citizens affected by this proposed rule change could incur substantial fiscal harm totaling approximately \$68,739.75 in lost benefits for each month the rule is not in effect.
- DHHS might be found in contempt of court.

10. A description of those affected. **NH citizens who apply for or receive FANF cash assistance who have children receiving SSI benefits are impacted by this proposed rule.**

**\*PLEASE SUBMIT 2 COPIES OF THIS COVER SHEET** and all attachments along with 2 copies of the **emergency rule** to the Office of Legislative Services, Administrative Rules.

**\*\*PLEASE SIGN THE FOLLOWING:**

I, the adopting authority,\* hereby certify that the attached is an accurate statement explaining why an emergency rule is necessary.

Date: August 31, 2016

Signature: 

Name: Jeffery A. Meyers

Title: Commissioner

(\*("Adopting authority" is the official empowered by statute to adopt the rule, or a member of the group of individuals empowered by statute to adopt the rule.)

**Amend He-W 654.04, effective 6-12-13 (Document #10358), by inserting new paragraph (d), so that He-W 654.04(d) is cited to read as follows:**

He-W 654.04 Treatment of Specific Types of Income.

(d) With respect to (c) above, supplemental security income (SSI) shall be excluded for the FANF categories of financial assistance when the recipient of the SSI benefit is a dependent child, as defined in He-W 601.03(e).

#### **APPENDIX**

<b><u>Rule</u></b>	<b><u>Federal Reg./RSA</u></b>
He-W 654.04(d)	RSA 167:3-c, I, RSA 167:4, I(a); RSA 167:79, II; RSA 167:80, IV(h)